

# **Draft Staff Report**

## **Amendment to the Water Quality Control Plan For the Colorado River Basin Region to Correct or Update Language, Tables, and Figures**

**Triennial Review Issue No. 9**

**September, 2010**

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**ATTACHMENT 1** - Resolution

**ATTACHMENT 2** - Basin Plan Amendment

**ATTACHMENT 3** - Environmental Checklist Form

## SUMMARY

The Water Quality Control Plan (Basin Plan) for the Colorado River Basin Regional Water Quality Control Board provides definitive guidelines and gives direction to the Regional Water Board for preserving and protecting water quality within the Colorado River Basin Region. Basin Plans prescribe beneficial uses for ground and surface waters, water quality objectives to protect beneficial uses, and implementation programs to achieve water quality objectives. Implementation programs include total maximum daily loads (TMDLs), waste discharge requirements (WDRs), NPDES permits, waivers, and remediation programs. Basin Plans fulfill statutory requirements for water quality planning in section 13240 of the California Water Code (CWC) and section 303(c) of the federal Clean Water Act (CWA) (33 U.S.C. section 1313(c)), and other state/federal statutory requirements, thereby effectively preserving and protecting ground and surface waters of the Colorado River Basin Region. However, excepting amendments to include Total Maximum Daily Loads for impaired surface waters, and septic system prohibitions in areas vulnerable to groundwater contamination, the Basin Plan has not had a comprehensive revision or update since 1994.

The Regional Water Board is obligated to keep the Region's Basin Plan current and accurate. This amendment proposes to revise parts of the Basin Plan (most recently amended in 2008) that are obsolete or incorrect due to new or revised laws, policies, technologies, water quality conditions, or Regional Water Board priorities. Both state and federal laws mandate the periodic review, and if necessary, update of Basin Plans. CWA section 303(c)(1) requires states to review their water quality standards at least once every three years – a process known as “triennial review.” The primary purpose of triennial review is to review water quality standards and to solicit public comment on issues the Regional Water Board typically addresses through the Basin Plan amendment process. The triennial review may result in amendments to the Basin Plan over the course of the three-year review cycle.

To make the Basin Plan consistent with new information, and current laws and regulations, this staff report describes an amendment proposing to revise/update parts of the following Chapters:

- Chapter 1 – *Introduction*,
- Chapter 3 – *Water Quality Objectives*,
- Chapter 4 – *Implementation*, and
- Chapter 5 – *Plans, Policies and Issues*

This Basin Plan amendment addresses the 2007 Triennial Review Work Plan Issue No. 9, *Correct Errors and Outdated Information, and Include Referenced Policies*. The Work Plan was adopted on March 19, 2008, by the Regional Water Board in a public hearing as part of its 2007 Basin Plan Triennial Review (Regional Water Board Resolution No. R7-2008-0013).

## I. RATIONALE FOR BASIN PLAN AMENDMENT

Each Regional Water Board is responsible for formulating and adopting a Basin Plan that protects the quality and beneficial uses of ground and surface waters in its region. Likewise, each Regional Water Board is responsible for ensuring the information in its Basin Plan is accurate and up-to-date. Both state and federal laws mandate the periodic review, and if necessary, update of Basin Plans.

This amendment proposes to update and revise parts of the Basin Plan (most recently amended in 2008) that are outdated or incorrect due to new or amended laws, policies, technologies, water quality conditions, or Regional Water Board priorities. This amendment also proposes to correct language, which is vague and unclear, or which may be confusing to the regulated community.

## II. PROPOSED REVISIONS TO BASIN PLAN

The proposed revisions are detailed in the amendment (Attachment 1) itself. In brief, the revisions are as follows:

### 1. Change Revision Date on Front Cover

- Replace former revision date (June 2006) with current revision date.

### 2. Revise and Update Table of Contents

- Correct labels used for tables and figures;
- Remove tables and figures from the body of the Table of Contents, and
- Add a *List of Tables* and *List of Figures* at the end of the Table of Contents, with table and figure labels organized in order of their occurrence in the Basin Plan.

### 3. Chapter 1 - Introduction

- Revise label for Plate 1-1, and
- Update *Ground Water Hydrology* text with current information regarding the ground water recharge project located in the Coachella Valley Planning Area.

### 4. Chapter 3 - Water Quality Objectives

- Update/revise Numeric Water Quality Standards (i.e., maximum contaminant levels) for radioactivity, and for chemical constituents that may occur in ground and surface water, to reflect recent regulatory revisions to Title 22 of the California Code of Regulations (CCR), and

- Revise language to improve accuracy and/or clarity.

#### **5. Chapter 4 - Implementation**

- Re-number tables and figures;
- Update permit requirements for Phase II Municipal Separate Storm Sewer Systems (MS4), and
- Update Mexicali II Waste Water Treatment Plant discussion.

#### **6. Chapter 5 - Plans, Policies and Issues**

- Provide electronic (web) addresses for policies referenced in Chapter 5, Appendix B.

### **III. ALTERNATIVES**

#### **1. No action**

If the Regional Water Board does not adopt the proposed changes, some of the information contained in the Basin Plan will be inaccurate or ambiguous. Providing incorrect or vague information is a disservice to the regulated community, stakeholders, and members of the public who rely on the accuracy of the information contained in the Basin Plan.

#### **2. Adopt the proposed changes to the Basin Plan**

By adopting the changes proposed for the Basin Plan, the Regional Water Board fulfills its obligation to maintain current and accurate basin plans. The Regional Water Board also satisfies federal and state requirements to periodically update basin plans.

### **IV. RECOMMENDED ALTERNATIVE**

Regional Water Board staff recommends Alternative 2 - Adopt the proposed changes to the Basin Plan. By implementing this alternative, the Regional Water Board's Basin Plan will be updated to accurately reflect new or recently amended laws, policies, technologies, water quality conditions, and Regional Water Board priorities.

### **V. ENVIRONMENTAL ANALYSIS**

The Regional Water Board must comply with the California Environmental Quality Act (CEQA) (Public Resources Code (PRC) section 21000 et seq.) when amending the

Basin Plan. CEQA requires the Regional Water Board to identify and analyze whether the proposed amendments will have any direct or reasonably foreseeable indirect, significant effects on the environment. If potentially significant environmental effects are identified, then CEQA requires the Regional Water Board to consider measures and alternatives to avoid or mitigate those effects to less than significant levels, and to solicit comments from the public and other potentially affected public agencies in this environmental review process.

The Regional Water Board is the lead CEQA agency for evaluating environmental impacts for the proposed Basin Plan amendment. Although the basin planning process is a regulatory action that is subject to CEQA, the Secretary for Natural Resources has certified this process as being exempt from certain CEQA environmental review requirements, including preparation of an Initial Study, Negative Declaration, and Environmental Impact Report (PRC Section 21080.5; California Code of Regulations (CCR), Title 14, Section 15251(g)). Pursuant to CCR, Title 23, Section 3777, documents required for Basin Plan amendments include: Staff Report; CEQA Environmental Checklist and Determination to assess the potentially significant environmental effects due to the proposed action; and alternatives to avoid or mitigate those effects to less than significant levels. Pursuant to the Secretary's certification of the basin planning process, the Staff Report, Basin Plan amendment, CEQA Environmental Checklist and Determination, and other supporting documentation (e.g., public comments and the Regional Water Board's responses to comments), are considered substitute environmental documents that may be relied on in lieu of an Initial Study, Negative Declaration, and Environmental Impact Report (CCR, Title 14, Section 15252).

Adoption of a Basin Plan amendment is a regulatory action that is also subject to the requirements of Public Resources Code Section 21159. Consistent with the requirements of that section, the Regional Water Board must perform an environmental analysis of the reasonably foreseeable methods by which compliance with that regulatory action will be achieved. Accordingly, the CEQA Environmental Checklist and Determination prepared includes an analysis of the reasonably foreseeable environmental impacts associated with the methods of compliance, an analysis of reasonably foreseeable feasible mitigation measures, and an analysis of reasonably foreseeable alternative means of compliance with the regulatory action to avoid or eliminate identified impacts (PRC Section 21159(a)(1)-(3); CCR, Title 14, Section 15187(b) & (c)(1-3)). The CEQA Environmental Checklist and Determination analysis takes into account a reasonable range of environmental, economic, and technical factors, as well as population and geographic area, and specific sites.

As shown in the Environmental Checklist Form (Attachment 2), there are no potentially significant environmental impacts associated with implementation of this Basin Plan amendment. Therefore, an analysis of alternatives is not needed to avoid or mitigate impacts. This finding of no environmental impacts is based on the fact that the amendment merely updates the Basin Plan to make it current. There are no substantive changes that affect the regulated community.



In summary, the proposed Basin Plan amendment updates Maximum Contaminant Levels (MCLs) for radioactivity, and chemical constituents in Chapter 3; revises information and corrects spelling errors in Chapters 1, 4, and 5; and provides electronic (web) addresses for policies referenced in Chapter 5. These revisions and additions simply update and/or provide clarity to the Basin Plan. They do not affect existing water quality objectives, or prescribe additional regulatory actions. As a result, there are no direct or reasonably foreseeable indirect significant environmental impacts caused by these updates/revisions.

## **VI. NECESSITY OF REGULATORY PROVISIONS**

State agencies are not allowed to issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a “regulation” as defined in Government Code Section 11342.600 of the California Administrative Procedure Act (APA), Government Code Section 11340 et seq., unless it has been adopted as a regulation and filed with the Secretary of State in accordance with the APA. (Government Code Section 11340.5(a)). Among the APA’s requirements is that the regulation must meet the APA’s “necessity” standard of Government Code Section 11353(b)(2)(C). “Necessity” is defined as meaning that the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific (Government Code Section 11349(a)). Because this Basin Plan amendment is being proposed to correct and update existing laws, it is needed to implement, interpret, and make specific those laws so that the Basin Plan accurately reflects existing law, which will enable the regulated community to be correctly and consistently informed as to the legal requirements that may apply to their activities. Therefore, this Basin Plan amendment meets the “necessity standard” of Government Code Section 11353(b)(2)(C).

In addition to the Water Code, the APA also prescribes procedural requirements by which proposed regulations are to be adopted. The State Water Resources Control Board (State Water Board) must review and approve any regulation proposed by a regional water board, which includes Basin Plan amendments (Water Code Section 13245). The State Water Board is then required to forward the approved proposed Basin Plan amendment to the Office of Administrative Law (OAL) for review and approval (Government Code Section 11353). OAL is the state agency created by the APA and charged with the responsibility for implementing and enforcing the APA. Accordingly, OAL reviews administrative regulations proposed by State agencies to determine compliance with the standards set forth in the APA, transmits the approved regulations to the Secretary of State, and publishes the approved regulations in the California Code of Regulations. To the extent that portions of the basin plan amendment impose new substantive water quality standards on water bodies that are subject to the federal Clean Water Act, the amendment must then be forwarded to the U.S. Environmental Protection Agency (USEPA) for review and approval (Clean Water Act Section 303(c) (33 U.S.C. Section 1313(c))). This Basin Plan amendment, however,

does not impose any such substantive standards on water bodies subject to the CWA. Instead, as previously stated, the amendment merely makes corrections and changes to reflect current laws and thus, does not impose any new substantive standards. Accordingly, USEPA review is not required.

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